

1 UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF ARIZONA  
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5 In Re: Bard IVC Filters ) MD-15-02641-PHX-DGC  
6 Products Liability Litigation )  
7 ) Phoenix, Arizona  
8 ) December 8, 2020  
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BEFORE: THE HONORABLE DAVID G. CAMPBELL, JUDGE

REPORTER'S TRANSCRIPT OF PROCEEDINGS

TELEPHONIC CONFERENCE

Official Court Reporter:  
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Proceedings Reported by Stenographic Court Reporter  
Transcript Prepared with Computer-Aided Transcription

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Also present: RUSSELL GAUDREAU

**P R O C E E D I N G S**

THE COURTROOM DEPUTY: Multidistrict Litigation  
15-2641, In Re Bard IVC Filters Products Liability  
Litigation, on for telephonic motion hearing.

Counsel, please announce for the record.

MR. GOSS: Tim Goss for the plaintiffs.

MR. O'CONNOR: Mark O'Connor for the plaintiffs.

MR. GOLDENBERG: Stuart Goldenberg for the  
plaintiffs.

MR. MOODY: Will Moody for the plaintiffs.

MR. LOPEZ: Your Honor, I think I was on mute.  
Ramon Lopez on behalf of the plaintiffs as well.

THE COURT: Okay. Let's hear defense counsel.

MR. NORTH: Richard North for the defendants.

MR. CONDO: James Condo for the defendants.

I heard Mr. North and Mr. Condo. Who else from the  
defense?

MR. GAUDREAU: Russell Gaudreau for the defense,  
Your Honor.

THE COURT: Anybody else?

Okay. Counsel, I've read the various submissions  
that have come in over the last month or two and I want to  
talk through the status of the cases as I understand them. I  
want to first talk about the cases that are still in the MDL.

14:01:58 1 So those would be the Track 2 cases.

2 Then after that I want to talk about the cases that  
3 were dismissed without prejudice and what's happening with  
4 those.

14:02:13 5 Based on the most recent filings you've made,  
6 including today, my understanding of the Track 2 cases is as  
7 follows: I understand there's about 950 or so cases where  
8 there have been releases signed and settlements concluded.

9 In the filing on December 4th, the parties provided  
14:02:37 10 some math to get to 948. That doesn't work in my -- because  
11 I added it up, it's more like a thousand but there may be a  
12 typo or something in there. But anyway, there's 950 to 1,000  
13 cases where releases have been signed, and the parties are  
14 asking that they have until March 15th of next year to  
14:03:02 15 finalize the settlements in those cases.

16 A second category of cases that remain in Track 2  
17 are cases that the parties are now suggesting should be  
18 remanded or transferred. In the filing that was made on  
19 November 13th, there's two charts for these cases. There is  
14:03:35 20 chart A, which includes about 20 cases and which the parties  
21 say are ready to be remanded because those are individuals  
22 who have opted out. And then there is -- actually, I take  
23 that back. I think Exhibit A are cases that people have  
24 opted out, but they are in the category of the Smith cases to  
14:04:09 25 be reinstated. So let's talk about those.

14:04:14 1 Exhibit D to the November 13th filing -- somebody  
2 has their phone on speaker and you are making a lot of noise.  
3 If you guys could mute your phones unless you're talking,  
4 that would be helpful.

14:04:32 5 The November 13th filing also has an Exhibit D that  
6 has 123 pages of cases with about five cases per page, so  
7 something like 615 cases.

8 The parties indicate that they think these cases  
9 should be remanded. I'm looking at page 3 of the  
14:04:55 10 November 13th filing and the parties say that only a small  
11 number of these plaintiffs have actually opted out. However,  
12 for a variety of reasons, the other plaintiffs have not  
13 signed a release as of this date. The parties are hopeful  
14 that a majority of those plaintiffs will eventually finalize  
14:05:13 15 this settlement, but they're listed in Exhibit D to be  
16 transferred back to their original or transferred to their  
17 home courts. So that's about 615 or so cases.

18 And then also in the November 13th filing is  
19 Exhibit C that identifies about 30 cases that lack  
14:05:37 20 jurisdiction and the parties propose that those be dismissed.

21 My first question for you is whether those three  
22 categories, the 950 or so that have been settled and you  
23 wanted until March to finalize, the 615 or so that are to be  
24 transferred, and the 30 or so that are to be dismissed for  
14:06:01 25 lack of jurisdiction, whether that encompasses all of the

14:06:05 1 Track 2 cases, or are there other cases in Track 2 that are  
2 not included in one of those three categories?

3 MR. NORTH: Your Honor, can you hear me?  
4 Richard North.

14:06:24 5 THE COURT: I can now.

6 MR. NORTH: I'm sorry, I had it on mute.

7 That is my understanding, that that accounts for all  
8 of the cases. Now, when we finally knock them out or get  
9 them transferred or dismissed, I can't promise the Court  
14:06:41 10 there may not be one errant one or two that we somehow missed  
11 in our database. But that is supposed to be an exhaustive  
12 accounting.

13 The one thing I would note, though, is that those  
14 numbers keep shifting in that I believe we received 70 or 80  
14:06:53 15 more releases since we filed the report on Friday.

16 THE COURT: Those would be releases of people who  
17 would have been in the Exhibit D group to be transferred?

18 MR. NORTH: Yes, Your Honor.

19 THE COURT: Okay.

14:07:13 20 Do plaintiffs agree that those categories encompass  
21 all of the Track 2 cases, assuming there isn't a straggler or  
22 two somewhere?

23 MR. LOPEZ: Your Honor, this is Ramon Lopez. The  
24 difficulty we have with that is really not -- I mean, there's  
14:07:30 25 probably hundreds of lawyers out there that still have cases.

14:07:36 1 We really have to rely on the defendants to maybe keep track  
2 of that. I know that I've been able to respond as to my  
3 cases for what's on that list, but I wouldn't be -- I'm not  
4 sure how we actually find out whether or not there are some  
14:07:59 5 that are on the list that shouldn't be or not on the list  
6 that should be.

7 So we're relying really on Mr. North, Mr. Gaudreau,  
8 who are keeping, obviously, universal track of those sorts of  
9 things. We're really not. I don't know how we could,  
14:08:17 10 frankly.

11 THE COURT: All right. I'm going to assume for a  
12 moment those include all of the Track 2 cases.

13 I would like to know more about what you said in the  
14 November 13th memo with respect to the 615 or so cases in  
14:08:41 15 Track 2 that are listed in Exhibit D for transfer.

16 You say in the memo on page 3, this is Docket 21726,  
17 "The parties note that only a small number of these  
18 plaintiffs have actually opted out of the settlements, for a  
19 variety of reasons. The other plaintiffs have not signed a  
14:09:02 20 release as of this date. The parties are hopeful that a  
21 majority of those plaintiffs will eventually finalize their  
22 settlements."

23 My understanding, notwithstanding that statement, is  
24 the parties are in agreement that those 615 cases should be  
14:09:17 25 transferred, with the exception of a few that may have opted

14:09:21 1 into a settlement. Is that correct?

2 MR. NORTH: Your Honor, Richard North for the  
3 defendants. We believe, consistent with the Court's previous  
4 orders, that if people have not signed releases by now, they  
14:09:42 5 were set to be dismissed after the report I believe in  
6 November. So we have put them on that list. Obviously, we  
7 continue to get additional releases. But the defendants  
8 don't have any control over the timing of the releases that  
9 are being returned to us by the plaintiffs' attorneys.

14:10:02 10 THE COURT: You said dismissed. I think you meant  
11 transferred, Mr. North.

12 MR. NORTH: Yes. I'm sorry, Your Honor,  
13 transferred.

14 THE COURT: All right.

14:10:16 15 Well, yeah, you're right. We did set that deadline.

16 What we're going to do is, before we finish today's  
17 call, is set a date within the next few weeks for you all to  
18 submit a final chart of cases to be transferred that will  
19 include these cases in Exhibit B, and I'll be specific about  
14:10:37 20 the information that needs to be included. But if you've  
21 gotten another 70 or 80 releases, then obviously those will  
22 come out of the chart. But we wanted to do this transfer  
23 early in January, so we're going to need to get a finalized  
24 list from you all of everything included.

14:10:59 25 Let's talk for a minute -- we're getting a lot of



14:11:09 1 static on the line. I don't know if we can do anything about  
2 that. Can you all still hear me?

3 MR. LOPEZ: I can hear you fine. I hear the static.  
4 I can hear you fine, Your Honor.

14:11:25 5 THE COURT: Okay. We'll keep going, then.

6 With respect to the cases that were dismissed  
7 without prejudice, in the October 23rd memo, the number that  
8 you provided for those was 4,347. That was a bit higher than  
9 the number that you had provided in July by 20 or 30 cases.

14:11:48 10 But I'll assume that's the approximate number.

11 And it appears from your recent filings that there  
12 are a couple of categories we ought to talk about.

13 First are the plaintiffs dismissed without prejudice  
14 who have opted out of the settlement. In the December 4th  
14:12:09 15 filing, you said there were 149 of them. In the filing you  
16 made today, you said that there were 140 of them because  
17 eight had decided to accept their settlements, but that -- I  
18 think there's one missing because there were 149 not 148  
19 mentioned in the December 4th filing, so that is a bit of a  
14:12:40 20 discrepancy.

21 But my understanding, then, is that these 140 or so  
22 people whose cases have been dismissed and who have opted out  
23 will need to have their cases reinstated, and then they will  
24 be included in the January order that transfers them to their  
14:13:01 25 home districts. Is that consistent with your understanding?

14:13:08 1 MR. GOSS: Yes, Your Honor. This is Tim Goss. And  
2 the reason for the one missing plaintiff, it was a formatting  
3 issue, so the correct number is 140. And those 140, those  
4 cases should be reinstated and transferred.

14:13:31 5 THE COURT: Okay.

6 Just one second. Let me look at something.

7 Mr. Goss, as I mentioned a moment ago, in the  
8 November 13th memo the parties Exhibit A, which was a list of  
9 20 plaintiffs who had opted out, people whose cases have been  
10 dismissed without prejudice. Am I correct in assuming those  
11 20 people are included in this 140?

12 MR. GOSS: Your Honor, I'm not familiar with that  
13 20. But I do know the 140 is the whole universe of cases  
14 where we've had opt-outs. So --

14:14:30 15 THE COURT: And you -- go ahead.

16 MR. GOSS: Your Honor, I'm sorry, I'm not familiar  
17 with the 20, I don't have the filing in front of me. Maybe  
18 Mr. North can address that. But the 140 is the universe of  
19 opt-outs that we currently have for our group of plaintiffs.

14:14:51 20 THE COURT: Mr. North.

21 MR. NORTH: Yes, Your Honor, that's my  
22 understanding, is that those 20 are subsumed in the 140 that  
23 was referenced today.

24 THE COURT: Okay. So we have 140 who have opted  
14:15:08 25 out. And then, based on the December 4th filing, there's

14:15:14 1 about 217 that are unresolved because they're either still  
2 considering the settlement or they are deceased or they're  
3 nonresponsive or they cannot being located. And I recognize  
4 that number is probably moving as well.

14:15:31 5 My question is this: Of the 4,347 or so cases that  
6 were dismissed without prejudice, is it true to say that the  
7 only cases that have not resulted in a settlement and a  
8 release are these 140 opt-outs and the 217 unresolved cases?

9 MR. GOSS: Yes, Your Honor. A little over  
14:16:00 10 90 percent of the clients have provided releases.

11 THE COURT: All right. So as to the -- by my math,  
12 if you subtract 140 and the 217 from the number I had in the  
13 October 23rd filing, that means there's about 3,918 of the  
14 cases that were previously dismissed without prejudice that  
14:16:25 15 have now been fully resolved with releases. Is that --

16 MR. GOSS: Your Honor, the number -- the number -- I  
17 asked that same exact question of my staff this afternoon.  
18 The number I got was 3,919. And it may be that one number  
19 that we keep -- that we keep being off by, but my number is  
14:16:47 20 3919.

21 THE COURT: Okay. And as to the 217 that remain  
22 unresolved, you would like a status conference on  
23 January 27th to talk about where those stand; is that right?

24 MR. GOSS: That's correct, Your Honor. I think we  
14:17:08 25 made progress in the last 60 days. A little over a hundred

14:17:10 1 were resolved. I think we can continue to make progress.  
2 It's just kind of slow treading right now.

3 THE COURT: Okay.

4 Well, what that means to me, then, is that what we  
14:17:24 5 need to do -- well, first of all, I will grant additional  
6 time to March 15th for the remaining Track 2 cases to be  
7 resolved, that is the 950 or so where parties have accepted  
8 the settlement. So we will grant that extension as you have  
9 requested.

14:17:50 10 We will enter an order dismissing for lack of  
11 jurisdiction the 30 cases that are in Exhibit C to the  
12 November 13th report, although I understand, Mr. North, you  
13 sent us an e-mail about one of those that was included by  
14 error.

14:18:09 15 MR. NORTH: Yes, Your Honor. Right.

16 THE COURT: We'll go ahead and do those dismissals.

17 And then, what we need to do is get from you a chart  
18 for transfers or remands that includes the 615 or so cases  
19 that are in Exhibit B to the November 13th filing, which  
14:18:35 20 apparently might have changed a bit in numbers, but also  
21 includes the 140 cases that have been dismissed that are also  
22 going to be transferred. Because we only want to do one  
23 transfer order. We think that is much easier for receiving  
24 districts to get. So we want to send the Track 2 cases and  
14:18:57 25 the dismissed cases to other courts all in one order. So

14:19:01 1 we're going to need a chart from you that includes both  
2 categories.

3 And what I'm going to ask you to do in that chart is  
4 add a column at the end that indicates whether the case is a  
14:19:16 5 Track 2 case or a dismissed case so we can make sure, before  
6 we enter the order transferring those cases, we reinstate the  
7 dismissed cases. Just to have a clear record that they're  
8 back in the MDL before we enter the transfer order. That  
9 way, with that chart, we should be able to do one transfer  
14:19:40 10 order that gets rid of these 600 and something Track 2 cases  
11 and the 140 dismissed cases.

12 We're going to need to have you figure out which  
13 districts we're transferring to on a few of these.  
14 There's -- I notice one case in Exhibit D -- actually two  
14:20:06 15 cases in Exhibit D where you say the district isn't  
16 identified in the complaint. That doesn't help us. We need  
17 to know from you which case -- or which district to transfer  
18 to. So please work those out before you submit the chart  
19 because we need to have the precise district it's going to.

14:20:34 20 And the other thing I want to mention is that  
21 previously in one of the filings since October, and I can't  
22 remember which, you indicated that there were two cases to be  
23 remanded by the MDL panel and the rest were to be  
24 transferred.

14:20:51 25 In the charts you've given us recently, you don't

14:20:54 1 have any being remanded. So we need to find those two cases  
2 that are subject to remand rather than transfer and have them  
3 included in a separate chart so we know what we're remanding  
4 and what we are transferring.

14:21:11 5 Are there any questions about what I've just said?

6 MR. NORTH: None from the defendants, Your Honor.

7 MR. LOPEZ: Your Honor, Ramon Lopez. I hesitate to  
8 ask this, I probably should know the answer, but what is the  
9 difference between remand and transfer, I guess is my  
14:21:33 10 question.

11 THE COURT: Well, the remand, Mr. Lopez, are the  
12 cases -- the remand are the cases that we got through the MDL  
13 panel, and the MDL panel remands them to the original court.

14 The transfers are the cases that were directly filed  
14:21:50 15 in Arizona and I just transfer those to their courts by Rule  
16 1404(a). They don't go back through the MDL panel.

17 MR. LOPEZ: Okay. I understand now. Thank you,  
18 Your Honor.

19 MR. NORTH: Your Honor, this is Richard North. I  
14:22:03 20 will verify this for the Court, but I have some recollection  
21 that those two cases originally identified for remand, that  
22 we subsequently got releases on those. But I will verify  
23 that for the Court.

24 THE COURT: Okay. Yeah, if you could just make sure  
14:22:20 25 of that we before we submit this chart. Because we're going

14:22:22 1 to take that chart and do two things: First, we're going to  
2 reinstate the cases on it that are going to be transferred or  
3 remanded; and then, secondly, we're going to transfer or  
4 remand, and we want to have all of the cases in front of us  
14:22:37 5 so we can do that in one fell swoop and not burden the  
6 transferor courts with multiple waves of cases.

7 Mr. North, how soon do you think you can have that  
8 chart finalized? I'm not asking you that to try to get you  
9 to do it in the next few days, I just want to know what is  
14:23:01 10 reasonable with the amount of cases that need verifying.

11 MR. NORTH: Your Honor, my colleague, Ms. Turner,  
12 may shoot me for saying this, but I believe we can get this  
13 done by the end of next week, if that would be suitable for  
14 the Court.

14:23:15 15 THE COURT: That's fine. Yeah. So that is  
16 December 18th?

17 MR. NORTH: Yes.

18 THE COURT: I'll tell you what, Mr. North, I'm not  
19 going to have my folks working Christmas week to try to do  
14:23:30 20 this because it's a huge task for our clerk's office. So I  
21 am probably -- and I don't think I'm going to ask them to do  
22 that between Christmas and New Year's. I'm probably not  
23 going to have them actually put that order together and do  
24 the work in the clerk's office until we start on January 4th  
14:23:53 25 or 5th, so why don't you take until December 30th to get it.

14:23:58 1 MR. NORTH: Okay.

2 THE COURT: Both because that might make it easier  
3 for you, but we also want the latest information when we do  
4 it, and if there are cases that drop out between the 18th and  
14:24:08 5 the 30th, it would be good not to include them.

6 MR. NORTH: Understood, Your Honor.

7 THE COURT: Let me mention one other thing, and then  
8 I'll be happy to hear your questions. I also want to ask  
9 Jeff and Nancy if they have things they want to add.

14:24:31 10 You did indicate in the filings that plaintiffs'  
11 counsel would prefer to file motions to withdraw for  
12 plaintiffs that are nonresponsive or can't be found in front  
13 of me rather than the transferor courts. I'm not going to do  
14 that. And the reason I'm not going to do it is this: I  
14:24:51 15 don't want to send a case back to another judge without a  
16 plaintiffs lawyer in the case because that just creates a  
17 huge problem for that judge. I think whoever filed the case  
18 here needs to ride it back to that court, and if they haven't  
19 been able to locate their client or get them to respond, then  
14:25:12 20 they can address it with the judge, but at least that judge  
21 has a lawyer to talk to. If I send them back a case with a  
22 pro se plaintiff where counsel just withdraws, I'm just  
23 creating a huge headache for them and I don't want to do  
24 that.

14:25:28 25 So motions to withdraw for folks that are not



14:25:30 1 responsive or can't be found will need to be addressed in the  
2 transferor courts with those judges in the locales where  
3 presumably the plaintiffs are located. And that might create  
4 a bit more work for you but I think it creates a lot less for  
14:25:45 5 those judges, and so that's the approach I want to take on  
6 it.

7 Jeff, do you have things that we've missed that we  
8 ought to talk about?

9 THE LAW CLERK: I do think it would be helpful to  
14:26:00 10 have a separate chart for the dismissed cases that we're  
11 going to vacate the dismissals, separate from the chart that  
12 includes them as part of the remand and transfer cases. So  
13 that if we do a separate order vacating dismissals it will be  
14 easier to do it that way.

14:26:22 15 THE COURT: Are you thinking -- (brief audio  
16 interference) yeah, I did. Are you thinking we would have a  
17 chart listing the dismissed cases and a chart of cases to be  
18 transferred that would include all of the dismissed cases?  
19 In other words, we just want a chart to attach to the  
14:26:37 20 dismissal order, but we want those same cases to be in the  
21 transfer chart; is that right?

22 THE LAW CLERK: Correct. It would be easier to  
23 vacate all the dismissals if we just have one chart to work  
24 from for that, and then, of course, that would be included if  
14:26:54 25 they are going to be remanded and transferred on the other

14:26:57 1 chart.

2 MR. NORTH: Your Honor, Richard North. That would  
3 be easy to do.

4 THE COURT: Okay.

14:27:05 5 Yeah, so let's do that. Yeah, that's a good point,  
6 Jeff. That will make our dismissal order easier.

7 Did you have other points, Jeff, that you wanted to  
8 mention?

9 THE LAW CLERK: No, that's it, Judge.

14:27:15 10 THE COURT: Nancy, are you on the line?

11 I'm not hearing Nancy.

12 THE COURTROOM DEPUTY: Judge, this is Christine.  
13 You had mentioned the status hearing January 27th.

14 THE COURT: Right. 4 p.m.?

14:27:33 15 THE COURTROOM DEPUTY: That works, yes.

16 THE COURT: That work? Yeah, let's do that status  
17 conference at 4 p.m. on January 27th.

18 And, Mr. Goss, if you could file an updated memo the  
19 day before so I'll be more prepared for that discussion.

14:27:52 20 MR. GOSS: Certainly, Your Honor.

21 THE COURT: Christine, do you have other matters  
22 that need to be addressed?

23 THE COURTROOM DEPUTY: That was it, Your Honor.  
24 Thank you.

14:28:02 25 THE COURT: Okay.

14:28:04 1 How about from plaintiffs' counsel, are there  
2 matters we need to talk about that we haven't covered?

3 MR. LOPEZ: Yes, Your Honor. Ramon Lopez. With  
4 respect to -- there are some cases that are not accepting the  
14:28:23 5 settlement, they're usually cases that are low-value cases  
6 where there's really not what one might consider a  
7 compensable or ascertainable injury. Some of those clients  
8 are rejecting their settlements.

9 And this is -- I'm not talking just about my cases,  
14:28:46 10 this is a situation that a number of us have where, in our  
11 agreement with the -- with Bard, they've agreed to allow  
12 these cases to be dismissed without prejudice, and I believe  
13 some have a tolling agreement for a year in the event, you  
14 know, this plaintiff should subsequently develop a more  
14:29:10 15 serious complication of the device.

16 I don't know, I haven't seen where -- you mentioned  
17 earlier dismissals without prejudice, but I'm not sure you're  
18 talking about this kind of situation.

19 My question to you is do we bring those motions  
14:29:29 20 before Your Honor or is this also something we should address  
21 with a transferor court?

22 THE COURT: Well, if I understand what you're  
23 saying, Mr. Lopez, it's a situation where plaintiff's lawyer  
24 has a client who has filed a claim in the MDL, the lawyer's  
14:29:55 25 judgment is that it's a low-value claim because there's

14:29:57 1 little or no injury, the client won't take the low-value  
2 settlement that's been offered.

3 MR. LOPEZ: That's correct. Yes, Your Honor. For  
4 the most part, that's correct.

14:30:10 5 THE COURT: Well, here's -- here's a thought,  
6 thinking out loud, and I'm happy to hear your reaction to it.

7 If we weren't in the MDL and a plaintiff filed a  
8 case in my court and the defendant offered a settlement  
9 amount that the plaintiff's lawyer thought was reasonable and  
14:30:30 10 the plaintiff thought was too low, I don't think what I would  
11 do with that case is dismiss it.

12 The plaintiff brought the case. The plaintiff has a  
13 right to pursue the case. I suppose if the plaintiff's  
14 lawyer has a basis for doing so in the fee agreement or under  
14:30:56 15 the ethical rules for seeking to withdraw, the plaintiff's  
16 lawyer could seek to withdraw.

17 But I guess I'm having trouble with the notion that  
18 I would dismiss a case even without prejudice because the  
19 plaintiff wouldn't accept a settlement offer.

14:31:14 20 I'm interested in your thoughts on that.

21 MR. LOPEZ: Yeah, I'm not sure it's so much that  
22 they wouldn't accept it, although that is part of it. The  
23 issue is, I mean we -- we do inform some of these clients  
24 that if they accept this settlement, despite the fact that  
14:31:37 25 they really don't have an injury, that they are going to

14:31:43 1 waive their rights should the device that's still in them  
2 later fracture or cause them additional harm. And under  
3 those circumstances the client or the plaintiff has to make a  
4 decision, do I take this nominal amount of money and give up  
14:32:03 5 my rights or do I dismiss this case without prejudice and  
6 wait until I have an injury that is worth me pursuing an  
7 injury case.

8 In some jurisdictions, and maybe many, the statute  
9 doesn't really begin to run on those cases and, in fact, you  
14:32:30 10 can file a second lawsuit if you have a subsequent  
11 complication from the same exposure, so.

12 Then, of course, there's the argument that the  
13 statute of limitations hasn't really begun on that injury in  
14 most jurisdictions. It depends on how the judge might see  
14:32:48 15 whether or not the injury has occurred to start.

16 So for the most part, you know, I can't speak for  
17 anyone else, but I know I've got a case where we had to file  
18 the complaint without really finding out whether or not there  
19 was a compensable injury that we would have pursued because  
14:33:07 20 we thought we had a statute. And then, you know, as time  
21 went on, it was pretty clear. I had a device that, you know,  
22 by looking at the medical records and speaking with the  
23 client, there was really a no harm, no foul type of  
24 situation. So in that particular case, advised the client,  
14:33:32 25 hey, if you take this money, you know, that's it. I mean, if

14:33:35 1 something happens in the future with your device, you're  
2 going to release and give up all your rights.

3 So that's the situation I'm talking about. I mean,  
4 that would be the rationale to dismiss the case without  
14:33:52 5 prejudice and allow the plaintiff to just go on his or her  
6 merry way as if the case had never been filed, and then if  
7 something happens in the future preserve that plaintiff's  
8 right to file another lawsuit.

9 THE COURT: And am I correct in understanding, then,  
14:34:11 10 Mr. Lopez, that the client, the plaintiff, would be  
11 consenting to the dismissal without prejudice?

12 MR. LOPEZ: Oh, of course, Yes, Your Honor. That  
13 would be the client's choice, in fact.

14 THE COURT: Right.

14:34:23 15 Mr. North, what are your thoughts?

16 MR. NORTH: I'm not really familiar with the  
17 situation that Mr. Lopez is discussing. I mean, I think it's  
18 a difficult situation when claims have been brought by people  
19 that really do not have injuries at the present time, but I'm  
14:34:43 20 not sure what can be done about it from our standpoint.

21 THE COURT: Well, I will say this, Mr. Lopez: The  
22 idea of you or another plaintiff's lawyer moving to dismiss  
23 with the plaintiff's consent without prejudice in front of me  
24 doesn't present the same concern I have about a motion to  
14:35:11 25 withdraw that I just described, because I would be getting

14:35:17 1 rid of the case if I granted the motion to dismiss without  
2 prejudice and I wouldn't be burdening another judge with an  
3 unrepresented plaintiff.

4 And I'm thinking it might make more sense for those  
14:35:28 5 motions to be brought in front of me where I understand  
6 what's happening in the MDL. Obviously, the defense could  
7 respond to the motion to dismiss if they decided to oppose it  
8 or have something to say about it.

9 So my thought for the time being, I think, is if you  
14:35:44 10 have those situations or others do, then those motions should  
11 be filed in front of me. And the defendant can respond and  
12 then we'll decide what to do with those motions to dismiss  
13 without prejudice.

14 MR. LOPEZ: Your Honor, I should have added, and I  
14:36:01 15 think I said this when I first started, it's actually in some  
16 of the master settlement agreements, I know it's in ours,  
17 that it only applies to a certain category of the way these  
18 cases were categorized. And it's the category where there is  
19 basically a product in place -- what we call a product in  
14:36:20 20 place case, where the defense has already agreed that we can  
21 dismiss those without prejudice. And I believe we also  
22 tolled the case for a year. Obviously that will be in our  
23 motion.

24 THE COURT: Right. And some of those will be  
14:36:37 25 unopposed. But I guess the short answer is yeah, you ought

14:36:41 1 to file those in front of me rather than wait for a transfer.

2 MR. LOPEZ: All right, Your Honor. And I'll advise  
3 others to do the same.

4 THE COURT: Okay.

14:36:54 5 Are there other questions from plaintiffs' counsel?

6 How about from defense counsel?

7 MR. NORTH: Nothing for the defendants, Your Honor.

8 THE COURT: Okay. We will put this in a minute  
9 entry and get it out to you, and everybody have a happy  
14:37:06 10 holiday. Thank you.

11 MR. NORTH: Thank you --

12 MR. LOPEZ: Same to you, Your Honor, and your staff.  
13 Thank you.

14 THE COURT: Thank you.

14:37:13 15 (End of transcript.)

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C E R T I F I C A T E

I, PATRICIA LYONS, do hereby certify that I am duly appointed and qualified to act as Official Court Reporter for the United States District Court for the District of Arizona.

I FURTHER CERTIFY that the foregoing pages constitute a full, true, and accurate transcript of all of that portion of the proceedings contained herein, had in the above-entitled cause on the date specified therein, and that said transcript was prepared under my direction and control, and to the best of my ability.

DATED at Phoenix, Arizona, this 1st day of April, 2021.

s/ Patricia Lyons, RMR, CRR  
Official Court Reporter